

HOGAN & HARTSON
L.L.P.

DAVID L. SIERADZKI
PARTNER
(202) 637-6462
DLSIERADZKI@HHLAW.COM

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

July 26, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., N.W.
Washington, D.C. 20554

**Re: AT&T Corp. Petition for Declaratory Ruling Regarding
Enhanced Prepaid Calling Card Services,
WC Docket No. 03-133**

Dear Ms. Dortch:

Adam Kupetsky of WilTel Communications, LLC ("WilTel"), and my colleague Peter Rohrbach and I on behalf of WilTel, made separate *ex parte* presentations today regarding the proceeding referred to above, to Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, and Scott Bergmann, Legal Advisor to Commissioner Adelstein. I also discussed the proceeding briefly with Jessica Rosenworcel, Legal Advisor to Commissioner Copps; and Mr. Kupetsky and I discussed the proceeding briefly with Steve Morris, Deputy Chief, Pricing Policy Division, Wireline Competition Bureau. We used the attached handout, which summarizes the content of the presentations. If you have any questions, please contact me.

Respectfully submitted,



David L. Sieradzki
Counsel for WilTel Communications, LLC

cc: Staff members listed above

**THE COMMISSION MUST ACT NOW IN THE
AT&T “ENHANCED” PREPAID CALLING CARD PROCEEDING**

A. A RULING HERE IS LONG OVERDUE.

- It is discriminatory and market-distorting for one company to be able to charge lower prices simply because it evades payment of charges for universal service and access. The same rules must clearly apply to all. Market winners should be companies with the best products and lowest real economic costs, not those with the highest tolerance for regulatory and enforcement risk.
- Today FCC inaction is confusing consumers and harming competition. Access charge/USF avoidance based on purported bundling of an “enhancement” or “information service” with a basic telecommunications offering is growing fast -- and is not limited to so-called “enhanced” prepaid calling cards.
- WilTel agrees strongly with AT&T that any ruling issued in this proceeding must apply equally to all parties in the industry, including facilities-based carriers and resellers.

B. THE FCC MUST CHOOSE BETWEEN TWO OPTIONS:

Option 1: All parties must pay their fair share of universal service and access.

- The Commission recently held that parties may bundle enhanced services or CPE with telecommunications – but that when they do so, they must pay universal service contributions based on the revenues from the separate telecommunications component of the bundle, or based on the total revenues from the bundled service. *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 16 FCC Rcd 7418 (2001) (“*Bundling Order*”).
- The Commission could confirm that the *Bundling Order* remains in effect, and that the same policy continues to apply to interstate access charges pursuant to Section 69.5 of the rules.
- Importantly, however, this Option only works if the Commission also makes very clear that it will not allow parties to game the rules to avoid their fair share of universal service and access costs in other similar contexts.
 - Otherwise, gaming of the system will not stop. Companies (including perhaps AT&T again) can easily come up with all manner of so-called “enhancements” whose only function is to avoid USF and access costs.
 - Consumers still will be confused. Markets still will be distorted. Regulators still will face disputes over non-compliance, and arguments over so-called “retroactivity.”

Option 2: ***No parties need to pay access and universal service (and refunds are available to those that have done so)***

- WilTel would support a very clear ruling that when companies bundle telecom and any “enhancement” they call an information service, they are excused from paying universal service and access -- provided that this ruling is generally applicable to everyone and not just AT&T.
- AT&T is not doing anything special that others cannot do. It is charging lower prices simply because it is not paying a cost of doing business that others are bearing because they believe the current FCC rules so require.
- We can get our own customers to write letters supporting lower prices based on our being excused from paying universal service and access. However, we do not think it is fair to confuse our customers by not explaining to them what this issue is really about. The Commission knows full well the game AT&T is playing.

C. IF THE COMMISSION DELAYS ACTION HERE, OTHER COMPETITORS ALSO WILL BE FORCED TO STOP PAYING UNIVERSAL SERVICE AND ACCESS FEES.

- AT&T alone cannot be allowed to avoid paying a major cost of doing business. This situation is economically unsustainable.
- AT&T’s “enhanced” prepaid card is but the tip of a large iceberg. This and related schemes aimed at universal service and access avoidance already are becoming a key driver of the market for all interexchange services: card, toll free and 1 plus services.
- The Commission needs to clarify what is permissible and what is not. Telecom competition today is unfairly based on companies’ respective tolerance for regulatory risk, rather than their fundamental cost and service quality advantages.
- Going forward, the Commission also must take strong steps to enforce its universal service and access rules so that all competitors pay their fair share. It is not acceptable to let companies take unilateral action to withhold payments, and then argue that they were “confused” as to the law.